Paper No. 29

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte VIRGINIA A. GARNER CULLISON, ALFIERI DEGRASSI,
DELROY G. BLISSETT and SIMON J. PORTER

Appeal No. 2003-1906
Application No. 09/458,623

ON BRIEF

Before KIMLIN, TIMM and POTEATE, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-4, 6, 7, 9-11, 13-22, 24, 26-29 and 33-37.

Claim 1 is illustrative:

> 1. An opaque, peelable lid for a container, which container has a top opening and a substantially flat peripheral rim around the opening, which lid comprises a coextruded composite film having a shape which conforms to the shape of the opening when attached to the rim, the film consisting of at least one first outer layer, each independently comprising a

> polyamide homopolymer or a polyamide copolymer, which first outer layer is attached to one side of an inner layer which consists essentially of an ethylene vinyl alcohol copolymer, which inner layer is attached on another side to at least one second outer layer independently comprising a polyamide homopolymer or a polyamide copolymer.

The examiner relies upon the following references as evidence of obviousness:

Grant	4,301,216	Nov. 17, 1981
Knott II et al. (Knott)	4,355,721	Oct. 26, 1982
Takanashi	4,537,305	Aug. 27, 1985
Schreck et al. (Schreck)	5,716,698	Feb. 10, 1986
Dallmann et al. (Dallmann)	4,572,854	Feb. 25, 1986

Appellants' claimed invention is directed to an opaque, peelable lid for a container, which comprises first and second outer layers of a polyamide homopolymer or a copolymer, and an inner layer of an ethylene vinyl alcohol copolymer. The first and second outer layers and inner layer are formed by a coextrusion process.

The appealed claims stand rejected under 35 U.S.C. § 103 as follows:

(a) claims 1, 2, 4, 6, 9, 11, 13-19, 21, 22, 24, 27-29, 33 and 35-37 over Takanashi in view of Knott and Schreck.

(b) claims 3, 7 and 20 over the stated combination of references further in view of Dallmann, and

(c) claims 10, 26, and 34 over the stated combination of references further in view of Grant.

Appellants' brief sets forth six different groups of claims. However, in addressing the three separate rejections of the examiner under § 103, appellants do not set forth separate arguments for any of the claims separately rejected as a group. Accordingly, the three groups of claims separately rejected by the examiner stand or fall together.

We have thoroughly reviewed each of appellants' arguments for patentability. However, we are in complete agreement with the examiner that the claimed subject matter would have been obvious to one of ordinary skill in the art within the meaning of § 103 in view of the applied prior art. Accordingly, we will sustain the examiner's rejections for essentially the reasons set forth in the answer, which we incorporate herein, and we add the following primarily for emphasis.

We consider first the examiner's rejection under § 103 over Takanashi in view of Knott and Schreck. Appellants do not dispute that Takanashi, like appellants, discloses a lid for a container comprising first and second outer layers of a

polyamide homopolymer or a copolymer and an inner layer of an ethylene vinyl alcohol copolymer.

It is appellants' contention that "while Takanashi may not disclose particular *lamination* conditions, the joining of their film layers is still limited to lamination and not coextrusion." (page 9 of principal brief, first paragraph). According to appellants, "a multilayered film formed by lamination is structurally different than a multilayer film formed by coextrusion." (page 10 of principal brief, second paragraph). We agree with the examiner, however, that coextrusion is a form of a lamination technique, i.e., layers may be laminated by coextrusion, adhesive bonding, etc. Significantly, the examiner has provided factual support that laminating can be accomplished by coextrusion. In particular, the examiner cites U.S. Patent Nos. 4,424,256, 4,405,667, 5,726,283 and 5,212,006. Appellants' reply brief fails to offer any response to the examiner's citation of these U.S. Patents. Indeed, appellants' own specification belies their argument that coextrusion is not a form of lamination. In relevant part, appellants' specification discloses the following:

> [p]rocesses for producing these laminates are well known. If two thermoplastics are compatible, they can be combined by coextrusion to form a composite structure or laminated by melting the surfaces of the layers in contact with one another and by applying pressure. If the two thermoplastics are not compatible they can be made into a laminate by placing an adhesive layer between the incompatible layers. (page 2, lines 8-13).

Accordingly, we are convinced that, based upon the collective teachings of Takanashi and Knott, as well as the state of the prior art, it would have been obvious for one of ordinary skill in the art to make the laminated lid of Takanashi by a coextrusion process.

Appellants also contend that Takanashi provides no teachings that the lid may be opaque. However, while Takanashi teaches that the layers of the lid are transparent and allow the contents to be readily inspected, we concur with the examiner that Schreck evidences the obviousness of adding a pigment to at least one of the layers of the film to protect the contents from radiation, if so desired. We find no error in the examiner's reasoning that the decision for one of ordinary skill in the art to opacify the lid is contingent upon its intended use.

Appellants also take issue with the examiner's finding that the lid of Takanashi is unoriented. Appellants cite examples at column 5, lines 41-59 wherein an intermediate layer is described as two layers of biaxially drawn polypropylene. However, we concur with the examiner's reasoning that since Takanashi describes the polypropylene layers as oriented, and provides no such description for the polyamide and ethylene vinyl alcohol copolymer, it is reasonable to conclude that the polyamide and ethylene vinyl alcohol of Takanashi are unoriented.

We also concur with the examiner that the unsealed corner of Takanashi's lid qualifies as "a tab", particularly in view of appellants' failure to define what qualifies as a tab. Moreover, we find that it would have been obvious for one of ordinary skill in the art to provide a tab on the lid of Takanashi.

As for appellants' contention that it cannot be assumed that the oxygen barrier properties for the lids of Takanashi and appellants are equivalent because they are different in composition and structure, appellants have not provided any argument or evidence which demonstrates a difference in composition and structure.

As a final point, we note that appellants base no arguments upon objective evidence of noobviousness such as unexpected results, which would serve to rebut the prima facie case of obviousness established by the examiner.

In conclusion, based on the foregoing, and the reasons well-stated by the examiner, the examiner's decision rejecting the appealed claims is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

EDWARD C. KIMLIN Administrative Patent Judge	)	
CATHERINE TIMM Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
LINDA R. POTEATE Administrative Patent Judge	)	

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